IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 1693 OF 2007

Jose Kuriakose Plakiyil.... Petitioner

versus

M/s. K/Raheja Real Estate
Service Pvt. Limited ..... Respondent.

Shri J.M.D'silva for the petitioner
Shri J.P.Cama Sr. Adv. with Sunil Trivedi i/b
K.D.Abichandani for Respondent no.1.
Shri R.M.Patne AGP for Respondent no.2.

CORAM; A.P. DESHPANDE, J.
DATED; 18TH JUNE, 2007

P.C.;

1. The petitioner was working under the respondent as a stenographer and was charge sheeted and proceeded against in a departmental enquiry on the charges of disobedience of lawful and reasonable orders of superiors and in subordination. As the charges were proved, the respondent terminated the petitioner from service and aggrieved thereby, and at the behest of the petitioner, a reference came to be made to the labour court. The Labour court has dismissed the reference and hence this petition. Briefly stated, the charges are:

i) On 31-10-1998 the legal consultant of the respondent instructed the petitioner to come along

with her and Mr.Amin to the city for some urgent official work, but the petitioner refused to obey the orders,

ii) Similarly on 11-2-1999 the petitioner was directed by Liaison Officer to report to the hotel next day at about 11 a.m. for some important official stenography work there, but the petitioner again refused and disobeyed the said order, and

iii) Thirdly on 23-2-1999 the General Manager of the respondent directed the petitioner to report the respondent's office in the company car along with officers for some urgent important stenography work but the petitioner refused to obey the order.

3. The labour court being of the view that the petitioner has disobeyed the reasonable and lawful orders passed by the respondent, has found the petitioner guilty of insubordination and disobedience and further held that the punishment of dismissal was proper and cannot be termed disproportionate to the act of misconduct. So observing the reference came to be dismissed.

4. The learned counsel for the petitioner has made two fold submissions, (1) that the disciplinary

authority had remained present when the enquiry officer was conducting the enquiry and the presence of the disciplinary authority has resulted in the enquiry being unfair in as much as the enquiry officer was influenced and the petitioner was under pressure. The labour court has considered this aspect on the basis of the evidence available and has come to the conclusion that only on one occasion the disciplinary authority's presence was sought by the managements representatives before the enquiry officer so as to facilitate spot instructions from the disciplinary authority. The petitioner has failed to establish that mere presence of the disciplinary authority on one occasion has caused prejudice. In the absence of any prejudice being caused to the petitioner and in absence of it being so demonstrated, it cannot be held that the mere presence of the disciplinary authority on one occasion would vitiate the entire enquiry.

5. It is then contended by the learned counsel for the petitioner that so far as the first charge of disobedience allegedly committed on 31-10-1998, the same is non existant in as much as though the petitioner had gone to the office for sometime on that day he had left the office within few minutes and was also marked absent. Thus the first charge cannot be said to have been established at all. Though the

petitioner has pleaded the fact of his absence, the said contention does not appear to have been pressed in the service before the court below, and hence there is no consideration thereof in the reference order passed by the labour court.

6. Perused the award passed by the labour court. The same does not warrant any interference at the hands of this court in exercise of writ jurisdiction. Hence writ petition is summarily dismissed.

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